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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

STATE COMPENSATION INSURANCE FUND ET
AL.,

Petitioners,

v.

WORKERS' COMPENSATION APPEALS BOARD
and MED-1 MEDICAL CENTER, INC.,

Respondents;

C084029

(WCAB. No. ADJ2452007)

Real Party in Interest Med-1 Medical Center, Inc. (Med-1) is a medical corporation that provided treatment to injured workers in San Joaquin, Stanislaus, Alameda, and Sacramento Counties. Petitioner State Compensation Insurance Fund

(State Fund) insured many of the injured workers.¹ Med-1 has filed medical treatment liens--over 500 of them--in the injured workers' compensation cases. This case concerns whether Med-1's medical treatment liens are valid following Med-1's failure to pay lien activation fees prior to Med-1's lien conference, as required by statute. Failure to timely pay the lien activation fee results in dismissal of the lien. (Lab. Code, § 4903.06, subd. (a)(4).)²

The issue arises after the collection of lien activation fees was enjoined in federal court pending a determination of the fees' constitutionality. Prior to the injunction, the fees had to be paid the earlier of: (1) the date the lienholder filed a declaration of readiness to proceed, (2) the date the lienholder appeared at a lien conference, or (3) before January 1, 2014. The injunction lasted from November 12, 2013 to November 9, 2015. When the injunction was vacated, lienholders were given from November 9, 2015 to December 31, 2015 to pay their lien activation fees. Med-1's lien conference was scheduled to commence November 17, 2015. Med-1 did not pay the lien activation fees by that date. The workers' compensation judge dismissed the liens. The Workers' Compensation Appeals Board (WCAB) rescinded the decision dismissing the liens, concluding Med-1 was allowed to pay the lien activation fees up to December 31, 2015, the date specified in the district court order vacating the preliminary injunction.

The issue presented is whether the district court's order lifting the injunction included an implicit exception to the December 31, 2015 payment deadline for cases set for lien conference after November 9, 2015 and before December 31, 2015, such that in those cases the lien fees had to be paid by the lien conference date, even though the

¹ California Insurance Guarantee Association was a party before the Workers' Compensation Appeals Board and has entered its appearance as a party in this writ proceeding pursuant to Labor Code section 5953.

² Undesignated statutory references are to the Labor Code.

district court order did not specify such an exception. We shall conclude that no such exception was implied in the district court order, and the available evidence indicates that no such exception was intended.

We agree with the WCAB that the federal district court order vacating the injunction and providing that “any” holder of an affected lien would be permitted to pay the fee by December 31, 2015, that “no lien” for which an activation fee was paid by December 31, 2015 would be subject to dismissal is controlling, and that Med-1’s liens should not have been dismissed. We shall affirm the WCAB order denying petitioner’s petition for reconsideration.

FACTUAL AND PROCEDURAL BACKGROUND

An injured employee whose employer or insurer declines to provide medical treatment on the grounds the injury was not work related or the treatment is not medically necessary may seek medical treatment without going to the employer’s medical provider network. (*Angelotti Chiropractic, Inc. v. Baker* (9th Cir. 2015) 791 F.3d 1075, 1078 (*Angelotti Chiropractic*)). A medical services provider such as Med-1 that provides these services may not seek payment directly from the injured worker, but must seek compensation by filing a lien in the injured employee’s workers’ compensation case. (*Ibid.*) By filing a lien, the medical provider is entitled to participate in the employee’s workers’ compensation proceeding in order to protect its interests. (*Ibid.*) “After the underlying workers’ compensation case is adjudicated, a ‘lien conference’ is held to discuss the liens that have not already been resolved through settlement. [Citation.] Any issues not resolved at the lien conference will be set for a ‘lien trial.’ ” (*Id.* at pp. 1078-1079.) Medical providers are entitled to payment if the worker establishes the injury was work related and the treatment was reasonably required to cure or relieve the injured worker. (*Id.* at p. 1079.)

The lien claims in question here were consolidated in 2005, thus all of them were filed prior to 2013, the date new legislation took effect. Effective January 1, 2013, lien

claimants were required to pay a lien activation fee of \$100 for each lien that was filed prior to the law's effective date. (§ 4903.06; *Angelotti Chiropractic, supra*, 791 F.3d at p. 1078.)³ The law provided that any lien for which a lien activation fee had not been paid by January 1, 2014 would be dismissed by operation of law. (§ 4903.06, subd. (a)(5).) If the claimant filed a declaration of readiness to proceed or appeared for a lien conference prior to January 1, 2014, the activation fee had to be paid at the earlier of those dates, or the lien would be dismissed with prejudice. (*Figueroa v. B.C. Doering Co.* (2013) 78 Cal. Comp. Cases 439 (*Figueroa*).) The WCAB issued an en banc precedential decision in April 2013 holding that the lien activation fee must be paid prior to the time a lien conference is scheduled to begin, or be dismissed. (*Ibid.*)

The legislation requiring the lien activation fee was subsequently challenged in federal court as unconstitutional, and the state was ordered to cease collection of all lien activation fees. (*Angelotti Chiropractic, Inc. v. Brown* (C.D.Cal. Nov. 12, 2013, No. SACV 13-1139-GW(JEMx)) U.S. Dist. LEXIS 185046.) The Ninth Circuit eventually upheld the constitutionality of the lien activation fees. (*Angelotti Chiropractic, supra*, 791 F.3d 1075.) Upon remand to the federal district court, the state was ordered to reestablish the systems that had been in place for payment of the lien activation fees, and

³ “On September 18, 2012, California enacted [Senate Bill No.] 863, which aims to address the ‘lien crisis,’ described in a January 5, 2011 report prepared by the California Commission on Health and Safety and Workers’ Compensation (‘Commission Report’). The Commission Report noted that the workers’ compensation courts lacked ‘the capacity to handle all the lien disputes’ that were filed. . . . According to the Commission Report, the backlog has two effects. First, frivolous liens remain pending for years rather than being denied outright, resulting in the employer paying to settle just to close the case. Second, meritorious liens are delayed, which means that employers can deny these claims with impunity for years. One of the reforms recommended by the Commission Report is the institution of a lien filing fee in order to deter the filing of liens generally, and particularly to deter the filing of frivolous liens.” (*Angelotti Chiropractic, supra*, 791 F.3d at p. 1079.)

to permit lienholders to pay lien activation fees from November 9, 2015 to December 31, 2015. (*Angelotti Chiropractic, Inc. v. Baker* (C.D.Cal. Nov. 2, 2015, No. SACV 13-1139-GW(JEMx)) 2015 U.S.Dist.LEXIS 150873.) Any lien filed prior to January 1, 2013, for which the lien activation fee was not paid by December 31, 2015, was dismissed by operation of law. (*Ibid.*) The order contained no exception requiring earlier payment for cases in which lien conferences had been scheduled to commence prior to December 31, 2015.

The district court's order in *Angelotti Chiropractic* was issued before a lien conference was scheduled to commence in this case. In fact, the lien conference was scheduled to commence on November 17, 2015, just eight calendar days after the district court ordered lienholders be permitted to start paying lien activation fees. At the lien conference, petitioner State Fund moved to have the lien claims dismissed by operation of law for failure to file the lien activation fee by the time of the lien conference, pursuant to section 4903.06. That section provides in pertinent part: "All lien claimants that did not file the declaration of readiness to proceed and that remain a lien claimant of record at the time of a lien conference shall submit proof of payment of the activation fee at the lien conference. If the fee has not been paid or no proof of payment is available, the lien shall be dismissed with prejudice." (§ 4903.06, subd. (a)(4).) The court dismissed the liens with prejudice for failure to pay the lien activation fee.

Med-1 petitioned for reconsideration of the order dismissing its liens. The WCAB granted reconsideration, and issued an opinion rescinding the workers' compensation judge's earlier decision dismissing the liens. The WCAB reasoned as follows:

"Section 4903.06, which became effective on January 1, 2013, requires payment of a lien activation fee of \$100.00 for all liens filed prior to that date as a condition of proceeding before the WCAB. [Citations.] As construed by the Appeals Board in *Figueroa*, which issued on April 5, 2013, a lien claimant is obligated under section 4903.06 to pay the lien activation before a lien conference is scheduled to begin, and not

when the case is actually called. In addition, the Appeals Board held in *Figueroa* that under the terms of section 4903.06 a lien claim is to be dismissed with prejudice without prior notice of intention if the lien activation fee is not paid before the commencement of the lien conference, or if proof of payment of the activation fee is not provided by the lien claimant at the conference. However, section 4903.06 was not fully implemented as written or construed in *Figueroa* because the U.S. District Court imposed a preliminary injunction against the collection of lien activation fees on November 19, 2013. [Citation.] Thus, it is the District Court orders that define the lien claimant's obligation to pay the lien activation fee and not section 4903.06 or *Figueroa*. [¶] . . . [¶]

“While phrasing in the District Court order that permits payment of the lien activation fee ‘from November 9, 2015 to December 31, 2015’ could be construed in the context of section 4903.06 to require payment of the fee before participating in a status conference during that time period, the order also plainly states that payment of the fee ‘shall be permitted’ at any time within that period. Moreover, the reference in the District Court order to a payment ‘deadline’ of December 31, 2015, and to the prohibition against the dismissal of any lien claim by operation of law if payment is made before that date, supports a construction of the District Court order that allows a lien claimant to pay the lien activation fee at any time during the period from November 9, 2015 to December 31, 2015.”

“Moreover, assuring lien claimants the opportunity to pay the \$100 activation fee during the less than two month period described in the November 2, 2015 order affords lien claimants due process in light of the procedural history of the case. It also is not inconsistent with the underlying purpose of section 4903.06, which according to a report of the Assembly Committee on Insurance, is to ‘provide a disincentive to file frivolous liens.’ [Citation.] [¶] . . . [¶]

“Upon return of the matter to the trial level, each lien claim and case should be properly identified. Once the liens are identified, any unpaid lien activation fee should be

ordered paid within a reasonable period of time and in the manner determined by the [workers' compensation judge]. . . .”

The WCAB denied State Fund’s petition for reconsideration. This petition for writ of review followed. We granted the writ, and now affirm the WCAB’s order denying reconsideration.

DISCUSSION

State Fund argues the WCAB misinterpreted the district court order in *Angelotti Chiropractic*, and that nothing in the order allows additional time for payment of activation fees prior to a lien conference under section 4903.06, subdivision (a)(4). Med-1 argues no writ of review lies for the WCAB’s decision because it was not a final order. We shall conclude the WCAB decision is reviewable, but that the WCAB decision was correct.

I

Review of WCAB Decision

“A party ‘affected by an order, decision, or award’ of the WCAB may apply to the Court of Appeal for a writ of review ‘for the purpose of inquiring into and determining the lawfulness’ of the order, decision, or award. (§ 5950.) However, appellate review of WCAB decisions is limited to ‘final’ orders that determine a substantial right or liability of a party. (*Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd.* (1980) 104 Cal.App.3d 528, 533-535.)” (*Duncan v. Workers’ Comp. Appeals Bd.* (2008) 166 Cal.App.4th 294, 299.) A decision is final for purpose of judicial review if it settles “an issue critical to the claim for benefits, whether or not it resolves all the issues in the proceeding or represents a decision on the right to benefits.” (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1075.) An interim order of the WCAB that presents a threshold issue is deemed to be a final order for purposes of judicial review. (*Ibid.*) A threshold issue is one that is basic to the establishment of the right to benefits. (*Ibid.*) The term “final order” also includes “ ‘orders dismissing a party, rejecting an affirmative defense,

granting commutation, terminating liability, and determining whether the employer has provided compensation coverage.’ ” (*Ibid.*)

Here the subject of the proceedings is not the worker’s claim for benefits, but the medical provider’s claim for payment on its liens. The decision regarding the dismissal of the liens determines a substantial right of the medical provider and a substantial liability of the insurer. It settles an issue critical to the provider’s claim for payments, and is a threshold issue in that it is basic to the establishment to the provider’s right to payments. It is akin to an order dismissing a party, rejecting an affirmative defense, and terminating liability, in that if the liens are dismissed, the providers have no recourse for payment.

Accordingly, the WCAB decision rescinding the judge’s dismissal of the liens is a final decision for purposes of judicial review.

II

The Liens Were Not Dismissed By Operation of Law

State Fund does not argue that the federal district court order in *Angelotti Chiropractic* had no authority over the payment of lien activation fees in this case. Instead, State Fund argues the WCAB misinterpreted the district court’s mandate in *Angelotti Chiropractic*. State Fund notes that the order lacked any special instruction for the payment of lien activation fees prior to a lien conference. State Fund argues that nothing in the district court’s order gave additional time for the payment of lien activation fees prior to a lien conference, or addressed the failure to pay the fee before the lien conference. Therefore, it argues, the order’s general statement, “Other than as set forth above, the Court’s November 13, 2013 Preliminary Injunction [] is hereby vacated[,]” applied to require lien activation fees to be paid prior to the lien conference.

To understand petitioner’s argument, we look to the requirements for timing of the lien activation fee prior to the *Angelotti Chiropractic* preliminary injunction. As indicated, the legislation requiring the lien activation fee became effective January 1,

2013. It required that any lienholder of a lien filed prior to that time was required to pay a lien activation fee. (§ 4903.06.) Any lien for which the fee was not paid by January 1, 2014, would be dismissed by operation of law. (§ 4903.06, subd. (a)(5).) The legislation also provided that proof of payment of the fee had to be included with a declaration of readiness to proceed, and if no declaration of readiness to proceed was filed, proof of payment of the fee had to be submitted at the lien conference. (§ 4903.06, subd. (a)(2), (4).) Accordingly, a regulation was promulgated that specified the lien activation fee was to be paid, “ ‘prior to filing a Declaration of Readiness to Proceed for a lien conference by that party, prior to appearing at a lien conference for a case, or on or before January 1, 2014, whichever occurs first.’ ” (*Figueroa, supra*, 78 Cal. Comp. Cases 439.) Thus all lien activation fees had to be paid before January 1, 2014, but if a declaration of readiness to proceed was filed or a lien conference was held prior to January 1, 2014, the lien activation fee had to be paid earlier. Petitioner’s argument is that since the lien conference in this case occurred before the last date possible to pay the lien activation fee, the fee should have been paid by the date of the conference, just as if the collection of lien activation fees had never been enjoined.

We disagree. The district court order provided that the state was required to reestablish the payment systems for payment of lien activation fees that had been in place prior to the entry of the earlier preliminary injunction. If those systems were reestablished by November 9, 2015, “any holder of a lien filed pursuant to subdivision (b) of Cal. Labor Code § 4903 prior to January 1, 2013 . . . shall be permitted to pay lien activation fees required by Cal. Lab Code § 4903.06 from November 9, 2015 to December 31, 2015. No lien filed pursuant to subdivision (b) of Cal. Labor Code § 4903 prior to January 1, 2013 . . . for which an activation fee has been paid on or before December 31, 2015 shall be subject to dismissal pursuant to Cal. Lab Code § 4903.06(a)(5).” This language clearly includes the situation in this case because Med-1 was the holder of a lien filed prior to January 1, 2013. The court order did not provide an

exception for cases in which lien conferences were set prior to December 31, 2015. We must conclude the failure to include an exception was intentional.

Our conclusion is supported by the joint status report filed in the district court by the parties in *Angelotti Chiropractic*. The report stated in part: “[T]he parties agree that *lienholders should be afforded at least 43 days to pay activation fees after the preliminary injunction is vacated and the former payment systems are re-activated*. To provide adequate time to give notice to lienholders who are not parties to this action and to reduce the risk the system may be overwhelmed, the parties jointly request that the *deadline be made December 31, 2015*. [¶] In addition, in order to ensure that they have sufficient time to reactivate the payment systems and to address any technical problems that may arise, Defendants request that they be given until November 9, 2015 to reactivate the payment systems. [¶] Accordingly, the parties jointly request that the Court’s order vacating the preliminary injunction allow Defendants until November 9, 2015 to reactivate the payment systems that had been established prior to the Court’s preliminary injunction to allow for payment of activation fees, and that *lienholders be given until December 31, 2015 to pay those activation fees*.” (Italics added.)

The above language indicates the parties intended all lienholders would have a period of 43 days in which to pay the activation fee. The parties were concerned with giving lienholders adequate time to pay the fee and with making sure no technical problems prevented a lienholder from paying the fee.⁴ These concerns are inconsistent with an interpretation that would force a lienholder to pay the fees in a greatly foreshortened period of time. The use of the term “deadline” in connection with

⁴ Med-1 did encounter technical difficulties. Med-1 presented evidence to the WCAB that at least 30 of the liens in question were not in the state’s electronic adjudication management system, which meant it was impossible to post the lien activation fee.

The circumstances of the case before us are completely different from the circumstances existing when the lien activation fee was enacted. Then, there was an entire year during which lienholders would become ready to proceed or lien conferences would be scheduled, before the last date possible to pay the lien activation fee. Here, there were a mere 43 days between the first day a lienholder was able to pay the lien activation fee and the last day the fee could be paid. The district court undoubtedly had this fact in mind when it drafted the order dissolving the preliminary injunction and providing a deadline for payment of outstanding lien activation fees without making an exception for earlier lien conferences.

The WCAB order denying petitioner's petition for reconsideration is affirmed.
Costs are awarded to Med-1 Medical Center, Inc.

We concur:

/s/
Murray, J.